



(BILLING CODE 3510-P)

DEPARTMENT OF COMMERCE

International Trade Administration

A-570-601

Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Notice of Court Decision Not in Harmony with Final Results of Antidumping Duty Administrative Review and Notice of Amended Final Results of Antidumping Duty Administrative; 2008-2009

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce

SUMMARY: On December 21, 2015, the United States Court of International Trade (“CIT” or “Court”) issued its final judgment<sup>1</sup> sustaining the Department of Commerce’s (the “Department”) final results of redetermination<sup>2</sup> issued pursuant to the CIT’s remand order in *Peer Bearing Co.-Changshan v. United States*, 986 F. Supp. 2d 1389 (CIT 2014) (“*CPZ 08-09 II*”), with respect to the Department’s final results<sup>3</sup> of the twenty-second administrative review of the antidumping duty order on tapered roller bearings and parts thereof, finished and unfinished (“TRBs”), from People’s Republic of China (“PRC”). Consistent with the decision of the United States Court of Appeals for the Federal Circuit (“CAFC”) in *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (“*Timken*”), as clarified by *Diamond Sawblades Mfrs. Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (“*Diamond Sawblades*”), the Department is notifying the public that the final judgment in this case is not in harmony with the Department’s

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<sup>1</sup> See, *Peer Bearing Company – Changshan v. United States*, Consol. Court No. 11-00022, Slip Op. 15-143 (CIT 2015) (“*CPZ 08-09 IIP*”), and accompanying judgment order.

<sup>2</sup> See Final Results of Redetermination Pursuant to Court Remand, *Peer Bearing Company – Changshan v. United States*, Consol. Court No. 11-00022, Slip Op. 14-62 (CIT 2014) (“Second Remand Redetermination”).

<sup>3</sup> See *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People’s Republic of China: Final Results of the 2008-2009 Antidumping Duty Administrative Review*, 76 FR 3086 (January 19, 2011) (“*Final Results*”) and accompanying Issues and Decision Memorandum (“IDM”).

*Final Results* and is amending the *Final Results* with respect to the dumping margins determined for Peer Bearing Company– Changshan and Changshan Peer Bearing Co., Ltd.<sup>4</sup>

EFFECTIVE DATE: December 31, 2015.

FOR FURTHER INFORMATION CONTACT: Keith A. Haynes, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-5139.

SUPPLEMENTARY INFORMATION: On December 21, 2012, the Court issued its initial opinion and remanded the *Final Results*, ordering that the Department: (1) redetermine the surrogate value (“SV”) applied to PBCD/CPZ’s input of bearing-quality steel bar; (2) reconsider its determination to calculate the normal value (“NV”) of subject merchandise that was imported by PBCD/Peer prior to its acquisition by SKF, but sold by SKF/Peer subsequent to the acquisition, using SKF/CPZ’s factors of production (“FOPs”); and (3) reconsider, and modify as appropriate, its determination of the country of origin of TRBs that were finished, and assembled in Thailand from TRB component parts both finished (*i.e.*, cups and cones) and unfinished (*i.e.*, rollers and cages) initially produced in and subsequently exported from the PRC.<sup>5</sup>

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<sup>4</sup> Prior to September 11, 2008, Peer Bearing Company-Changshan was majority-owned by the Spungen family (“PBCD/CPZ”). On September 11, 2008, two and a half months into the period of review (“POR”), PBCD/CPZ, the sole respondent in the prior 2007-2008 POR, and its Illinois-based U.S. sales affiliate, Peer Bearing Company (“PBCD/Peer”) (collectively, “PBCD”), were each purchased by certain companies owned by SKF. In the underlying review, we found that the post-acquisition respondent was not the successor-in-interest to the pre-acquisition respondent and, thus, were each legally distinct entities for the purposes of this antidumping duty (“AD”) review. The post-acquisition respondent is referred to as the SKF-owned Changshan Peer Bearing Company, Ltd. (“SKF/CPZ”) and its Illinois-based affiliate is referred to as Peer Bearing Company (“SKF/Peer”) (collectively “SKF”). For ease of reference, the two respondents are referred to by their collective names “PBCD” and “SKF” throughout this document. For the purpose of generally referencing the physical facilities in question during the POR in its entirety, without consideration of ownership, the Changshan-based TRB production facility is referred to as “CPZ” and the Illinois-based U.S. sales affiliate is referred to as “Peer.”

<sup>5</sup> See *Peer Bearing Company-Changshan v. United States*, 884 F. Supp. 2d 1313 (CIT 2012) (“CPZ 08-09 I”).

In the First Remand Redetermination,<sup>6</sup> pursuant to *CPZ 08-09 I*, the Department: (1) determined that Thai import data under Harmonized Tariff Schedule subheading 7228.30.90 are the best available information on the record with which to value PBCD/CPZ's bearing-quality steel bar inputs, and adjusted the margin program accordingly; and (2) re-calculated the weighted-average dumping margin for SKF so that PBCD/CPZ's FOPs (not SKF/CPZ's FOPs) were used to determine the NV of SKF/Peer's post-acquisition sales of pre-acquisition inventory.<sup>7</sup> With respect to the Court's directive to reconsider the country of origin finding from the *Final Results* and modify its determination, as necessary, the Department reconsidered its determination in its entirety, applying its established criteria for determining whether merchandise is substantially transformed in another country. The Department expanded upon and further supported the existing findings as to the physical/chemical properties/essential character,<sup>8</sup> nature/sophistication of processing,<sup>9</sup> level of investment,<sup>10</sup> and cost of production ("COP")/value-added,<sup>11</sup> finding that these factors continued to support an overall finding that the third-country processing was not substantial so as to confer Thai origin. Consistent with the Court's remand order, the Department also discussed and further explained the relevance of the class-kind/scope<sup>12</sup> and ultimate use<sup>13</sup> criteria used in the underlying analysis. The Department did not "reach a determination as to whether circumvention has occurred or may occur and, thus, {found} that this element {did} not preclude or support a finding of substantial

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<sup>6</sup> See Final Results of Redetermination Pursuant to Remand, Consol. Court No. 11-00022, Slip Op. 12-125 (CIT 2012), dated May 13, 2013 ("First Remand Redetermination").

<sup>7</sup> See First Remand Redetermination at 36-40.

<sup>8</sup> *Id.*, at 16-20.

<sup>9</sup> *Id.*, at 13-15.

<sup>10</sup> *Id.*, at 26-32.

<sup>11</sup> *Id.*, at 20-26.

<sup>12</sup> *Id.*, at 10-13.

<sup>13</sup> *Id.*, at 34-35.

transformation.”<sup>14</sup> Based on the totality of circumstances, the Department determined in the First Remand Redetermination that:

{T}he Thai processing does not substantially transform the TRB parts and that the TRBs remain of PRC-origin. The nature and sophistication of processing indicate that the finishing processes in Thailand serve only to further refine the cup and cone’s finished measurements, polish the raceway, and assemble the components together. The physical/chemical properties and essential component are imparted in the PRC, with the properties added in Thailand marginal in comparison. The COP/value added in Thailand is insignificant when compared to the COP of the finished TRB. The level of investment in Thailand was not as significant as the investment in the PRC. The ultimate use of TRB parts and final, finished TRBs is the same. These factors weigh in favor of a finding that the TRBs which are finished in Thailand are of PRC-origin. The class or kind/scope criterion is not determinative to our finding, although the fact that the upstream product is within the same class or kind and scope as the downstream product is relevant to our country-of-origin determination.<sup>15</sup>

On June 10, 2014, the CIT issued *CPZ 08-09 II*, in which it sustained the Department’s re-determined SV for bearing-quality steel bar. However, the Court remanded, for a second time, the Department’s country of origin determination.<sup>16</sup> Specifically, the Court found that “the method and criteria applied in the Remand Redetermination caused Commerce to ignore critical record evidence” and that “the record lacked substantial evidence to support the ultimate finding Commerce reached in the {First} Remand Redetermination.”<sup>17</sup> The Court further noted that the product at issue (*i.e.*, merchandise completed or assembled in a third country, Thailand) was “of a type Congress contemplated would be the subject of an anti-circumvention inquiry, without actually conducting such an inquiry.”<sup>18</sup> In so doing, the Court found that the Department “exceeded its authority to interpret, without expanding, the scope language” of the TRBs order.<sup>19</sup>

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<sup>14</sup> *Id.*, at 34.

<sup>15</sup> *Id.*, at 35-36.

<sup>16</sup> *See CPZ 08-09 II*, 986 F. Supp. 2d at 1414.

<sup>17</sup> *Id.*, at 1406.

<sup>18</sup> *Id.*, at 1402-03.

<sup>19</sup> *Id.*, at 1406.

Finally, though the Court held that the Department provided adequate reasoning for using PBCD/CPZ's FOP data to calculate the NV for pre-acquisition PBCD/CPZ-produced merchandise subsequently sold by SKF/Peer during the post-acquisition portion of the POR in the First Remand Redetermination, the Court remanded for further explanation the Department's use of PBCD/CPZ's FOP data from the twenty-second POR, rather than PBCD/CPZ's FOP data from the prior POR.<sup>20</sup>

In compliance with the Court's instructions, the Department under protest re-determined the country of origin for certain merchandise under review, and revised the dumping margin calculations to exclude U.S. sales of TRBs further processed in Thailand, finding those TRBs to be Thai-origin.<sup>21</sup> In particular, the Department explained that it "did not conduct a circumvention analysis pursuant to section 781(b) of the {Tariff Act of 1930, as amended ("the Act")}" and thus could not "find that the TRBs in question are of Chinese origin."<sup>22</sup> With respect to the remaining issue on remand, the Department explained that it is consistent with section 773(c)(4) of the Act, to use production data from the POR in which the merchandise is sold, because this best reflects the producer's production experience from the period in which the Department is determining the margin of dumping; therefore, the Department did not find that PBCD/CPZ's FOP data from the prior POR is a more accurate reflection of PBCD's production of merchandise sold by SKF during the POR.<sup>23</sup> Therefore, to determine the margin for SKF/Peer's sales of merchandise produced by PBCD/CPZ, the Department continued to use PBCD/CPZ's POR-contemporaneous FOPs to calculate NV. Along with the SV changes

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<sup>20</sup> *Id.*

<sup>21</sup> See Second Remand Redetermination at 8.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*, at 12-13.

sustained in *CPZ 08-09 II*, the Department calculated weighted-average dumping margins for PBCD of 21.65 percent and SKF of 19.45 percent.<sup>24</sup>

On December 21, 2015, the CIT issued its decision in *CPZ 08-09 III*, in which it sustained the Department's Second Remand Redetermination. Specifically, the Court sustained the Department's decision regarding selection of the FOP data used to value post-acquisition sales of pre-acquisition inventory.<sup>25</sup> Furthermore, with respect to the country of origin finding, the Court concluded that the Department reached an ultimate determination that is supported by substantial evidence on the record that accords with a reasonable, rather than expansive, interpretation of the scope of the antidumping duty order. The Court found that the Department's analysis presented in the Second Remand Redetermination, although suffering from some flaws in the interpretation of the Court's holding in *CPZ 08-09 II*, was sufficient to allow the Court to sustain the Department's ultimate determination.<sup>26</sup>

#### Timken Notice

In its decision in *Timken*, 893 F.2d at 341, as clarified by *Diamond Sawblades*, the CAFC held that, pursuant to section 516A(e) of the Act, the Department must publish a notice of a court decision that is not "in harmony" with a Department determination and must suspend liquidation of entries pending a "conclusive" court decision. The CIT's December 21, 2015, judgment in this case constitutes a final court decision that is not in harmony with the Department's *Final Results*. This notice is published in fulfillment of the publication requirements of *Timken*.

#### Amended Final Results

As a result, of the Court's final decision with respect to this case, the Department is amending the *Final Results* with respect to PBCD/SKF and SKF/CPZ in this case. The revised

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<sup>24</sup> *Id.*, at 17.

<sup>25</sup> *See CPZ 08-09 III*, at 7.

<sup>26</sup> *Id.*, at 15-19.

weighted-average dumping margins for the June 1, 2008, through May 31, 2009, period of review are as follows:

Exporter	Final Percent Margin
Peer Bearing Company– Changshan (Spungen-owned, PBCD)	21.65
Changshan Peer Bearing Company, Ltd. (SKF-owned, SKF)	19.45

The Department will continue the suspension of liquidation of the subject merchandise pending the expiration of the period of appeal or, if appealed, pending a final and conclusive court decision. In the event the Court's ruling is not appealed or, if appealed, upheld by the CAFC, the Department will instruct U.S. Customs and Border Protection to assess antidumping duties on unliquidated entries of subject merchandise exported by the above listed exporters at the rate listed above.

#### Cash Deposit Requirements

Since the *Final Results*, the Department has established a new cash deposit rate for SKF/CPZ.<sup>27</sup> Therefore, the cash deposit rate for SKF does not need to be updated as a result of these amended final results.

Since the *Final Results*, the Department has not established a new cash deposit rate for PBCD/CPZ. However, as explained above, in September 2008, PBCD/CPZ was acquired by AB SKF, and the Department determined via a successor-in-interest analysis that SKF/CPZ was not its successor in interest. As a consequence, PBCD/CPZ effectively no longer exists, and its cash deposit rate does not need to be updated as a result of these amended final results.

#### Notification to Interested Parties

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<sup>27</sup> See *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of the Antidumping Duty Administrative Review and Final Results of the New Shipper Review; 2012–2013*, 80 FR 4244 (January 27, 2015).

This notice is issued and published in accordance with sections 516A(e), 751(a)(1), and 777(i)(1) of the Act.

Dated: January 13, 2016.

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Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

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